**IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.**

D.B.CIVIL SPECIAL APPEAL (WRIT) NO. 220/2007

**For Approval and Signature** :

**HON'BLE THE CHIEF JUSTICE MR. J.M.PANCHAL**

**HON'BLE MR. JUSTICE BHANWAROO KHAN**

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1. Whether Reporters of Local Papers may be allowed to see the judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the judgment ?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?
5. Whether it is to be circulated to the Civil Judge ?

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**Habta Ram – Appellant**
**Versus**
**State of Rajasthan & ors. - Respondents**

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**Appearance** :
Mr. Girish Sankhla , for the appellant

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**CORAM** :

**HONOURABLE THE CHIEF JUSTICE MR.J.M.PANCHAL**
**HONOURABLE MR. JUSTICE BHANWAROO KHAN**

**Date : September 25, 2007**

**ORAL JUDGMENT**

**PER: HON'BLE THE CHIEF JUSTICE MR. J.M. PANCHAL**

The instant appeal is directed against the judgment dated November 22, 2006 rendered by the learned Single Judge in S.B.Civil Writ Petition no.

6447/2005 by which the prayer made by the appellant to set aside the judgment dated March 17, 1999 rendered by the Board of Revenue as well as the judgment dated September 22, 1999 rendered by the Revenue Appellate Authority and judgment dated January 20, 2003 rendered by the Sub Divisional Officer holding that the property in question belongs to the temple, is refused.

The appellant claimed that he had purchased the land in question from the widow of late khatedar in the year 1964. According to him, his name was entered as khatedar of the land in the mutation Register till Svt. Year 2034. What was claimed by him was that settlement took place in the year 1994-95 and while allotting new khasra number, the name of the appellant was deleted from the revenue record by indicating that the land belonged to deity of *Neelkanth Mahadev*. The claim of the appellant was that there was no existence of any temple in the village at all. Therefore, he instituted a suit for declaration that he was the owner of the land in question and prayed to set aside the entry made in the revenue record in the name of deity *Shri Neelkanth Mahadev*. The suit was dismissed by judgment dated March 17, 1999. Feeling aggrieved, the appellant preferred an appeal before the Revenue Appellate Authority. The appeal was dismissed by judgment dated September 22, 1999. Thereupon the appellant filed second appeal before the Board of Revenue. The said appeal was also dismissed by the judgment dated January 20, 2003. Thereupon the appellant invoked extra ordinary jurisdiction of this Court under Arts. 226 and 227 of the Constitution by instituting S.B.Civil Writ Petition no. 6447/2005. The

learned Single Judge has dismissed the petition by judgment dated November 22, 2006 giving rise to the instant appeal.

This Court has heard the learned counsel for the appellant and considered the documents forming part of the petition. From the record of the case it is evident that a pure finding of fact has been recorded by the courts below that the property in question belongs to temple. The said finding was recorded after perusal of Ex. P/1 which is K*hasra Bandobast* and Ex. P/2 which is *Khatauni Bandobast*. On appreciation of evidence adduced by the parties the courts below have concluded that from Svt. Year 2009 to 2028 the disputed land was recorded in the Doly of the temple and continued as such till Svt. Year 2031 and thereafter by way of mutation entries nos. 509, 510 and 511 dated May 31, 1971 the disputed land was entered in the name of the *Pujari*. The plea that appropriate issue as to whether there was temple of *Neelkanth Mahadev* was not framed by the learned Judge and therefore the matter should be remanded for fresh consideration, cannot be accepted. If the appellant was of the opinion that appropriate issue for determination were not framed by the court, the remedy of the appellant was to submit an application requesting the court to frame appropriate issue. However, the record does not indicate that any such application was submitted by the appellant. The contention that as the disputed land was purchased by the appellant in the year 1964 from the then khatedar, the suit should have been decreed, cannot be accepted, inasmuch as the sale-deed relief upon by the appellant is not registered one at all and does not confer any right or title on the appellant as far as the disputed land

is concerned. The finding that the property belongs to the temple is a pure finding of fact and is not liable to be interfered with by this Court in a petition filed under Arts. 226 and 227 of the Constitution. Therefore, this Court is of the opinion that the learned Single Judge did not commit any error in not entertaining the petition. No ground is made out by the learned counsel for the appellant to interfere with the impugned order and therefore, the appeal which lacks merit deserves dismissal.

For the foregoing reasons the appeal fails and is dismissed.

(BHANWAROO KHAN), J. (J.M.PANCHAL), ACTG. C.J

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